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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/463,601	01/28/2000	HEINZ GOD	00287/469311	6532

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EXAMINER

CHRISTMAN, KATHLEEN M

ART UNIT PAPER NUMBER

3713

DATE MAILED: 10/06/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/463,601

Applicant(s)

GOD, HEINZ

Examiner

Kathleen M Christman

Art Unit

3713

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2003 and 07 August 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 49-67 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 49-67 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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### **DETAILED ACTION**

In response to the request for reconsideration filed 09/02/2003; claims 49-67 are pending.

#### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 08/07/2003 has been entered.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 49-67 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The limitations "a device operable to cause a visual presentation to be displayed on a display screen for a predetermined introduction period of time" and "wherein the predetermined introduction period of time is less than 0.2 seconds", as in claim 49 and similar language in claims 62 and 65, appear to be in conflict with applicant's invention as disclosed. These limitations appear to limit the "visual presentation" to 0.2 seconds or less. In the embodiments where the visual presentation is a computer game, a television film or a video game this is more apparent as these presentations do not last for this short of period of time. The examiner believes that the introduction period is supposed to apply to the amount of time the "learning content" is displayed and has interpreted the claims as such for purposes of this rejection. The limitation "the predetermined introduction period of a learning content" in claim 52 further supports this interpretation. The above phrase also lacks antecedent basis. The term "substantially shorter" in claim 52 is a relative term, which renders the claim indefinite. The term "substantially shorter" is not defined by

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the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Claims 50, 51, 53-61, 63, 64, and 66-67 are rejected for their incorporation of one or more of the above deficiencies through their dependencies.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 49-57 and 59-67, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Mead (US 5644363) in view of Backus et al (US 5017143). Mead teaches a subliminal video instructional device and method which may be interpreted as the learning system as claimed. The system and method comprising: a device operable to cause a visual presentation to be displayed on a display screen, col. 3: 57-61; a device operable to call up learning content to be learned from a learning material memory, col. 5: 64-66; and a device operable to introduce the learning content on the display screen, referred to as the subliminal message generator throughout Mead (claims 49, 62, and 65). The learning content being called from memory into a buffer memory from which it is introduced at least one time into the visual presentation on the display screen (claim 55) is shown in col. 4: 49-53 of Mead. Introduction of materials through acoustical representations, including speech (claim 57, 64, and 67) is taught at col. 4: 21-25 of Mead. The contents of the learning material memory being variable (claim 59) and the contents being variable by a person being subjected to the learning (claim 60) are taught by the use of a "key cartridge", which is described at col. 3: 47-52. The visual presentation being a television film or a video game (claims 61, 63, and 66) is taught at col. 3: 31-34. Regarding claim 56, the system is designed so as to superimpose the subliminal message on a video signal; this is achieved through a

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modulation sequence. Given the nature of the system, the location of introduction contents must follow the visual presentation on the display screen.

Mead fails to specifically teach that an introduction period of time that is less than 0.2 seconds (claims 49, 62, and 65), that the learning contents appear at changing locations in a region of the visual presentation on the display screen (claims 49, 62, and 65), and the learning contents are introduced at predetermined time intervals from each other and wherein the predetermined introduction period of a learning content is substantially shorter than a time interval between two successive introductions of the learning content (claim 52), specifically 1-10 seconds (claim 53).

Backus teaches in a description of the art of subliminal messaging that video subliminal messages are flashed or faded every 1-30 seconds, see col. 1: 31-32, and presented for about 1/30 (.03 seconds) see col. 1: 33-35. The ability to change the location of the message is taught at col. 4: 34-36. It would have been obvious to include the older well-known features of subliminal message presentations as taught by Backus, into the Mead system so as to ensure that the messages were presented at the proper frequency to ensure they maintained their "subliminal" nature.

Neither Mead nor Backus specifically teaches a device operable to interrupt the visual presentation during an introduction of a learning content (claim 50), a device operable to control said learning system based upon data inputted by an input device (claim 51), that the time interval between the learning contents may be set by the user (claim 54). The Mead system is functions through the use of a VCR and further discloses the ability to have "on screen programming", see at least col. 5: 18-20. It is the examiner's position that it is old and well known to those of ordinary skill in the art to include a remote control for the programming and operation (including a pause button for interrupting a presentation) and that such a remote acts as an input device to the system. It would be obvious to include this old and well-known component into the Mead system so as to allow a user a convenient way to program the system. Mead also teaches that modulations and display of subliminal messages being too high may cause a distraction to the user, at col. 2: 58-65. Given this it would be obvious to one of ordinary skill in the art to allow a user to set the display interval to one that was unnoticeable, thus maintaining the subliminal nature of the messages.

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***Allowable Subject Matter***

4. Claim 58 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

5. The previous rejection under 35 USC §101 has been overcome by the amendments made to the claims.

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

a. Sever, Jr (US 6057846 and US 5736986) teach systems and methods for subliminal messaging

b. Willson (US 5134484) teaches a system and method for incorporating subliminal messaging into various visual and audio/visual presentations

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathleen M Christman whose telephone number is (703) 308-6374. The examiner can normally be reached on M-F 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teresa Walberg can be reached on (703) 308-1327. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

  
Kathleen Christman

  
Teresa Walberg  
Supervisory Patent Examiner  
Group 3700